

REMARKS/ARGUMENTS

Claims 23, 24, 37 and 39-42 are pending in the application.

Reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant submits the following remarks in response to the April 27, 2010 Office Action. The pending claims are not taught, suggested or disclosed by the cited references and should be patentable. Reconsideration and a withdrawal of all outstanding rejections is requested and warranted.

The specification has been amended, and a marked up version showing the changes, as well as a clean version incorporating those changes are provided herewith.

A summary of the case is as follows. In the office action of December 3, 2008, the USPTO indicated that claims 10 and 12 contained allowable subject matter, and therefore, applicant, amended claim 37 to include the feature of allowable claim 10. Claim 12, also previously indicated to be allowable, was rewritten and presented as new claim 40. The Office Action of July 30, 2009 set forth new grounds for rejection of the claims. Applicant responded, and the office action of April 30, 2010 was issued.

Applicant addresses the rejections, and, in view of the above amendments and the remarks presented herein, respectfully traverses the rejections.

THE SECTION 112 REJECTIONS

Applicant is pleased that the prior 112, second paragraph, rejection of claims 37-40 has been withdrawn in view of Applicant's previous amendment.

Claim 24 stands rejected under 35 U.S.C. 112 as lacking enablement. This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The office action contends that the specification does not provide enablement for insoluble fiber that is cellulose. The office action contends that cellulose is described in the specification as a bulking agent and not an insoluble fiber. However, as one of ordinary skill in the art would understand from the Applicant's disclosure, cellulose is an insoluble fiber, and one would understand that the disclosure of cellulose in the composition would be the disclosure of an insoluble fiber.

Although Applicant believes that claim 24 as previously presented is supported by the Applicant's disclosure, Applicant, in an effort to more particularly articulate the language of the specification, has amended claim 24 to recite that the insoluble fiber comprises a cellulose bulking agent.

For these reasons, the invention of claim 24 is enabling for the claimed subject matter, and the rejection should be withdrawn.

Claims 37, 39 and 40 stand rejected under 35 U.S.C. 112, first paragraph, as lacking enablement. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are respectfully requested.

The rejection is based on the specification lacking enablement for dough with gas bubbles that contains animal protein. Applicant points out that the original disclosure provides support for the claimed subject matter. Applicant's

original claim 9 recites a dough that contains animal protein (the animal based protein concentrate). Applicant further points to claim 10, which originally depended from claim 9, and recites that the mechanical methods comprise pressurization of dough. Furthermore, Example III recites konjac and animal based protein being heated together to over 100° C, and specifically mentions the use of the product as a flour or base, and that the use may be illustrated with the examples in the specification. (*See Applicant's specification at pp. 6-7*).

Contrary to the position in the Office Action, the specification, as originally filed, explicitly states that the product of Example III (konjac and animal based protein concentrate heated to over 100° C) may be used as a flour or base, etc. The bread dough in Example IV follows the statement in the specification that the examples illustrate uses. Moreover, in Example IV, there is mention that the bread dough is prepared using an embodiment of the “foregoing example” (i.e., the preceding or previously stated example – Example III) of konjac glucomannan. (*Id.*) Clearly, the specification discloses and provides the support for the Applicant's claimed invention.

Applicant has amended the specification to further include the language of original claims 9 and 10. No new matter has been introduced, and the amendment is fully supported by the Applicant's original disclosure. The amendment to the specification reads:

An exemplary use of the animal based konjac product in Example III may be used to make a dough. The dough preferably includes konjac glucomannan and animal based protein concentrate, and has gas bubbles introduced into the dough using mechanical and/or chemical methods. One example of a

Reply to Office Action dated: April 27, 2010

Reply date: June 28, 2010

mechanical method involves pressurization of the dough. Another example of a mechanical method involves high speed whipping of the dough.

For these reasons, claims 37, 39 and 40 are now believed to be supported by the specification. Accordingly, reconsideration and a withdrawal of the rejection is requested.

THE 103(a) REJECTION OVER TYE SHOULD BE WITHDRAWN

Claims 23, 24, 37, 39 and 40-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636). This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The rejection appears to be inconsistent in its reliance on the Tye reference. The rejection relies on and cites to Tye for an alleged disclosure of pre-hydrating konjac, by contending that Tye, at col. 4, lines 18-26 discloses this at 25° to 100° C for 5 to 30 minutes.

Tye is further relied on by the office action because the office action asserts that one of ordinary skill in the art would have reduced the processing time of the product of Tye by increasing the temperature of Tye's extruded snack and surimi analog.

However, the use of heat would not be suggestive of creating a heated mixture of components to form an ingredient product and then forming a product that includes, as a component of that final product, the admixture component. Applicant understands the rejection to relate to a use of heating in general to accelerate cooking. However, Tye would therefore need to provide the heating

Reply to Office Action dated: April 27, 2010

Reply date: June 28, 2010

before all of the product ingredients are brought together, and Applicant does not consider that one of ordinary skill in the art would look to Tye to gain this teaching, nor would one gain a result of Applicant's invention based on Tye's disclosure.

Consider, if Tye is alleged to teach hydrating the konjac with heating, then the Tye thermally stable gel is what results (according to the reference).

Applicant's claimed invention specifically states that the gummy gel product is avoided by the present invention. Rather, according to Applicant's invention a flour is produced and used as an admixture. The admixture claimed as a component of the claimed dough would therefore contain this component. The CCPA has recognized the patentability of a composition that recites an admixture as part of the claimed composition. See *In re Herrick*, 55 CCPA 1238, 397 F.2d 332, 158 USPQ 90 (CCPA 1968) (claim reciting an admixture to be patentable).

The Office Action recites what it considers are the Applicant's claims:

But the claims are directed to a cooked food product that is dough with gas bubbles in it.
(4/30/2010 Office Action, p. 5)

Applicant points out that the claims recite a food product that is **dough**, not a **cooked food product**. It would appear that the office action provides a reading of the invention other than what the Applicant specifically is claiming. Applicant does submit that there is a component of the dough that is formed by heating, but that heated component is itself used, as an ingredient, to form the dough, and therefore, the dough would need to be used and be cooked to form a cooked food product. The precooking, or desire to accelerate cooking argued in the office

Reply to Office Action dated: April 27, 2010

Reply date: June 28, 2010

action, would not be an obvious way to accomplish the Applicant's invention in view of the cited references. As Applicant pointed out above, the Tye reference produces a gel, and Applicant seeks to provide an ingredient that is a component of the final product, that is not a gummi component.

Applicant has attempted to further define the invention by reciting that the dough contains a homogeneous mixture of the admixture of the konjac and animal protein concentrate in the dough. This is not disclosed or suggested by the cited references.

The office action relies on Tye for its teaching and disclosure, but considers Applicant to disclose a "product" heated to 100° C. Applicant does not claim heating the dough to 100° C, but rather claims a dough that is imparted with a component which is a uniform mixture of a homogeneous konjac and animal protein composition that is part of the claimed dough.

Therefore, Applicant claims a dough that includes as a component thereof, the treated compound of konjac and animal protein. As a way of claiming this component as part of the dough, Applicant has used the description of the component admixture to include, as part of its claimed dough, an ingredient that has a particular texture property, and which is an ingredient that further is a homogeneous mixture. The component admixture includes konjac glucomannan and animal based protein concentrate. The component that is part of the claimed dough is a component admixture that contains the konjac and animal protein in a ratio by volume. This component of the dough further is claimed to have a predetermined texture. Applicant describes the feature of the dough component

Reply to Office Action dated: April 27, 2010

Reply date: June 28, 2010

as having been heated to above 100° C and further provides that the claimed dough contains a component that has improved texture for facilitating use of said admixture as a component of the dough. The dough recited in claim 37 further describes the admixture component as comprising a homogeneous mixture of said konjac glucomannan and said animal based protein concentrate. So therefore, Applicant's claimed dough includes, as a component thereof, a homogeneous mixture of konjac glucomannan and animal based protein concentrate. The dough is not a cooked product, and the feature of the dough having gas bubbles imparted therein through mechanical methods, is again referring to the claimed dough, and not a cooked food product. Applicant has amended claim 37 to more particularly articulate this feature by reciting that said dough includes gas bubbles that have been introduced into said dough using mechanical methods comprising pressurization of dough.

The contention in the office action that the heating of the admixture would reduce cooking time, and that would provide a basis for applying Tye's disclosure with a higher temperature to arrive at the Applicant's claimed invention is inconsistent with producing a dough that includes a homogeneous component that contains konjac glucomannan and an animal based protein concentrate. Applicant does not disclose partial cooking of the dough, but rather provides a claimed dough that has a component with textural properties that are defined in the claim. The office action position appears to be based on the Applicant desiring to precook its dough, and that is not what Applicant discloses and claims.

Applicant has amended claim 37 to recite an improved dough. The Applicant's claimed improved dough product recites as a component thereof the homogeneous konjac glucomannan and animal based protein concentrate that has been texturized. The cited references fail to disclose or suggest a texturized homogeneous component that the present dough recites and claims.

Moreover, the office action position would appear to exclude from the prior art the Applicant's claimed dough. Assuming that Tye stands for heating of konjac glucomannan and surimi, then that disclosure would, according to the office action, be cooking of the final product, and therefore, the properties and texture of the component claimed as part of the Applicant's dough would not be present in Tye, since the dough would not be arrived at, but rather, the alleged heating, assuming the office action's application of the Tye disclosure according to what the office action states, would not impart the texture qualities referred to in the Applicant's dough ingredient. Even assuming the office action's treatment of Tye, the result of providing the texture of the alleged product would be upon cooking of a final product. That is what the Applicant desires to avoid. The Tye compositions would result in heating the components, which would not include the claimed admixture as part of the product, but rather a product that is something else. Tye does not disclose Applicant's claimed dough with a homogeneous admixture of konjac and glucomannan as part of its product. Rather, Tye would appear to disclose nothing other than cooking the product which would result in the gumminess that Applicant's claimed composition attempts to avoid. Therefore, Tye does not disclose or suggest Applicant's dough

that contains a component that is present in the dough, where the component, in the form present – as a component – has the texture that Tye would not have. Tye does not disclose the Applicant's claimed dough with the claimed component admixture as part of the dough.

Applicant's invention is not taught, suggested or disclosed by the cited references and should be patentable.

In addition, the product recites a dough where gas bubbles are introduced into the dough through pressurization of the dough. The cited references do not appear to recite a pressurized dough.

Reconsideration and a withdrawal of the 103(a) rejection is respectfully requested.

\

\

\

\

\

\

\

\

\

\

\

Reply to Office Action dated: April 27, 2010


Reply date: June 28, 2010

If further matters remain, the Examiner is invited to telephone the Applicant's undersigned representative to resolve them.

If necessary, an appropriate extension of time to respond is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
HARDING, EARLEY, FOLLMER & FRAILEY
John F. A. Earley III
Frank J. Bonini, Jr.
Attorneys for Applicant



Frank J. Bonini, Jr.
86 The Commons at Valley Forge East
1288 Valley Forge Road
P.O. Box 750
Valley Forge, PA 19482-0750
Telephone: 610-935-2300
Fax: 610-935-0600

Date: 6/28/2010